

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LEE FITZGERALD, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE SHADE STORE, LLC,

Defendant.

**Case No. C23-1435RSM**

**ORDER DENYING MOTION TO  
DISMISS**

**I. INTRODUCTION**

This matter comes before the Court on Defendant The Shade Store, LLC's Motion to Dismiss, Dkt. #30. The Shade Store argues that Plaintiff Lee Fitzgerald's claims should be dismissed for failing to adequately allege damages and for other certain reasons, and that Plaintiff's nationwide class allegations should be dismissed for lack of standing. Plaintiff has filed an opposition, Dkt. #37. The Court has determined that it can rule without the need of oral argument. For the reasons stated below, the Court DENIES The Shade Store's Motion.

**II. BACKGROUND**

For purposes of this 12(b)(6) Motion, the Court will accept all facts in the First Amended Complaint, Dkt. #29, as true. The Court will briefly summarize the relevant facts.

Defendant The Shade Store is a Delaware company that makes, sells, and markets blinds, shades, and other window covering products through its website, [www.theshadestore.com](http://www.theshadestore.com).

1 On February 27, 2022, Plaintiff Fitzgerald purchased a set of cellular shades from  
2 Defendant's website. She made this purchase while living in Seattle, Washington.

3 This purchase occurred during an advertised sale. On February 18, 2022, Defendant  
4 stated on its website that a "20% OFF ALL ORDERS" sale was running through the date of  
5 Ms. Fitzgerald's purchase until "3/2." Defendant represented that the list price of the Product  
6 that Ms. Fitzgerald purchased was \$640.00 and that Ms. Fitzgerald was receiving a discount of  
7 \$128.00. Defendant confirmed this in an email it sent to Ms. Fitzgerald after she made her  
8 purchase. Ms. Fitzgerald includes screenshots of all of this in her Complaint.  
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10 Ms. Fitzgerald alleges she read and relied on the above representations from the website  
11 and email confirmation, specifically that her shades were being offered at a discount for a  
12 limited time and had a higher regular price, and that she would be receiving a price reduction.  
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14 Plaintiff alleges that The Shade Store "creates an illusion" that customers are receiving  
15 a limited-time discount "by advertising fake limited-time sales, fake regular prices, and fake  
16 discounts based on the fake regular prices." Dkt. #29 at 8. These discounts are advertised as  
17 available for a limited time, however immediately after each sale ends Defendant generates  
18 another similar or identical discount, with a new expiration date. Examples screenshots  
19 showing a 20% off sale continuing after the end date are included in the Amended Complaint.  
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21 *See id.* at 17. According to the allegations, the shades are never sold at non-sale prices.

22 Plaintiff alleges that the above is deceptive and unfair and induced her to make a  
23 purchase that she would not otherwise have made. She alleges that she and others in the  
24 proposed class "received Products with market values lower than the promised market values."  
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26 *Id.* at ¶ 84.  
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1 The Amended Complaint brings claims for: violation of the Washington Consumer  
2 Protection Act (“CPA”); breach of contract; breach of express warranty; quasi-contract/unjust  
3 enrichment; and intentional misrepresentation. Plaintiff seeks actual and punitive damages.

### 4 III. DISCUSSION

#### 5 A. Legal Standard under Rule 12(b)(6)

6 In making a 12(b)(6) assessment, the court accepts all facts alleged in the complaint as  
7 true, and makes all inferences in the light most favorable to the non-moving party. *Baker v.*  
8 *Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).  
9 However, the court is not required to accept as true a “legal conclusion couched as a factual  
10 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,  
11 550 U.S. 544, 555 (2007)). The complaint “must contain sufficient factual matter, accepted as  
12 true, to state a claim to relief that is plausible on its face.” *Id.* at 678. This requirement is met  
13 when the plaintiff “pleads factual content that allows the court to draw the reasonable inference  
14 that the defendant is liable for the misconduct alleged.” *Id.* The complaint need not include  
15 detailed allegations, but it must have “more than labels and conclusions, and a formulaic  
16 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Absent  
17 facial plausibility, a plaintiff’s claims must be dismissed. *Id.* at 570.

#### 21 B. Analysis

22 As an initial matter, the Court notes that the legal theories at issue here are familiar to  
23 the Court and to this Defendant in particular. The Shade Store has been sued in California by a  
24 different consumer for essentially the same conduct at issue. That lawsuit asserts materially  
25 identical claims both in common law and under a similar state statute, Defendant moved to  
26 dismiss, and the Court denied that Motion in part. *See Crowder v. Shade Store, LLC*, 2024 U.S.  
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1 Dist. LEXIS 41896 (N.D. Cal. Feb. 12, 2024). Plaintiffs in that case amended the complaint,  
2 Defendant again moved to dismiss, and the Court denied the motion to dismiss the state  
3 statutory claims, intentional misrepresentation, and punitive damages claims, but dismissed the  
4 quasi-contract/unjust enrichment and negligent misrepresentation claims. *Crowder v. The*  
5 *Shade Store, LLC*, Case No. 23-cv-02331-NC, Dkt. #69 (N.D. Cal. June 26, 2024).

7 This type of “fake discount” case has also been tried here as a violation of  
8 Washington’s CPA. “Inducing a plaintiff into spending money she otherwise would not have  
9 spent, based on a misrepresentation, is clearly a cognizable injury” under the CPA. *Nemykina*  
10 *v. Old Navy, LLC*, 461 F. Supp. 3d 1054, 1061 (W.D. Wash. 2020).

11 Considering the above, the Court finds that Plaintiff’s claims are generally plausible  
12 where sufficient facts have been alleged. The Court will go through the facts of each claim  
13 below.

### 15 1. CPA Claim

16 The Shade Store first moves to dismiss Plaintiff’s CPA claim for failure to adequately  
17 allege a cognizable injury or that it engaged in an unfair act or deceptive practice. A CPA  
18 claim requires a plaintiff to allege “(1) ... an unfair or deceptive act or practice, (2) in trade or  
19 commerce, (3) that impacts the public interest, (4) resulting in injury to business or property,  
20 and (5) a causal link between the unfair or deceptive practice and the injury suffered.” RCW  
21 19.86.020; *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784-  
22 85, 719 P.2d 531 (1986).

25 The Amended Complaint is fairly detailed and specific as to the circumstances of  
26 Plaintiff’s shades purchase. Plaintiff alleges that “Defendant’s advertisements harm consumers  
27 by inducing them to make purchases they otherwise would not have made, based on false  
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1 information,” Dkt. #29 at ¶ 49, and that she herself “would not have made the purchase if she  
2 had known that the Product was not discounted as advertised, and that she was not receiving  
3 the advertised discount,” *id.* at ¶ 54. She also alleges that “due to Defendant’s  
4 misrepresentations, [she] and the class paid more for the Products they bought than they  
5 otherwise would have.” *Id.* at ¶ 49. Plaintiff includes detailed factual allegations explaining  
6 why this is. *See id.* (“Defendant’s advertisements artificially increase consumer demand for  
7 Defendant’s Products. This puts upward pressure on the prices that Defendant can charge for its  
8 Products. As a result, Defendant can charge a price premium for its Products, that it would not  
9 be able to charge absent the misrepresentations”). This is all that is required to adequately  
10 plead the injury element of a CPA claim. The Court further finds that the Amended Complaint  
11 adequately alleges an unfair act or deceptive practice. The Amended Complaint identifies with  
12 particularity the advertisements Plaintiff claims are deceptive, with screenshots. It explains in  
13 detail why and how the advertisements are false. Defendant should have no trouble responding  
14 to these allegations. Further arguments about the sufficiency of the evidence can be dealt with  
15 at a later stage in this litigation.

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19 Defendant argues that the CPA claim should be dismissed under the reasoning in  
20 *Kinney v. Amazon.com, Inc.*, 2024 U.S. Dist. LEXIS 35162 (N.D. Ill. Feb. 29, 2024), and  
21 *Montes v. Sparc Grp. LLC*, 2023 U.S. Dist. LEXIS 108379 (E.D. Wash. June 22, 2023).  
22 Plaintiff explains in her Response brief how the pleading in those cases falls short of the  
23 pleading in the instant case. *See* Dkt. #37 at 10–11. Despite the outcomes in those cases, the  
24 pleading here states a plausible claim.

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## 2. Intentional Misrepresentation Claim

Defendant's arguments for dismissal of this claim based on a lack of injury are properly denied for the reasons articulated above. Defendant also argues that this claim is barred by the economic loss rule because Plaintiff is simultaneously pursuing contractual claims, citing *Poulsbo Grp., LLC v. Talon Dev., LLC*, 229 P.3d 906 (Wash. Ct. App. 2010). Dkt. #30 at 17. Plaintiff responds by citing *Eastwood v. Horse Harbor Foundation, Inc.*, 241 P.3d 1256 (Wash. 2010) and *Jackowski v. Borchelt*, 278 P.3d 1100, 1109 (Wash. 2012) for the proposition that this claim can proceed if it sounds in fraud, "because the independent duty doctrine permits a party to pursue a fraud claim regardless of whether a contract exists." Dkt. #37 at 18. The Court agrees with Plaintiff's reasoning and the parties seem to agree that this claim sounds in fraud. Dismissal is not warranted.

## 3. Breach of Contract Claim

Defendant argues that this claim fails to adequately *allege* breach or damages. Dkt. #30 at 17. For the same reasons stated above, the Court has already found that Plaintiff has adequately pleaded damages. Breach of contract is also alleged in sufficient detail. For example, Plaintiff alleges that a contract imposes a duty on Defendant "to provide Products having a particular listed regular price and market value, and to provide those Products at the discounted price advertised." Dkt. #29 at ¶ 56; *see also* ¶¶ 57-58 (explaining how the contract was formed and setting forth the material terms of the contract); ¶¶ 87-89. Plaintiff alleges a breach of that duty: "Defendant breached its contracts by failing to provide Ms. Fitzgerald and other members of the putative class with Products that have a regular price and market value equal to the regular price displayed, and by failing to provide the discount it promised." *Id.* at ¶ 60 and ¶ 91. Whether or not Plaintiff can prove these allegations remains to be seen.

#### 4. Breach of Express Warranty Claim

Plaintiff alleges Defendant “issued material, written warranties by advertising that the Products had a prevailing market value equal to the advertised regular price” and that “the Products were being sold at an advertised discounted price.” Dkt. #29 at ¶¶ 96-97. She alleges that these were “affirmation[s] of fact about the Products” and “promise[s] relating to the goods.” *Id.* ¶ 96.

Defendant argues that “[g]enerally, to constitute an express warranty, a statement must relate to the quality of the good.” Dkt. #30 at 19 (citing *Innovative Sols. Int’l, Inc. v. Houlihan Trading Co.*, 2024 WL 324530, slip op. at \*2 (W.D. Wash. Jan. 29, 2024) and *Flooring Assocs., Inc. v. Design Mfg. Int’l, LLC*, 2021 WL 1551473, at \*14 (W.D. Wash. Apr. 1, 2021). The Court agrees with Plaintiff that these two cases involved statements relating to the quality of the goods but do not limit express warranties to such statements. Instead, Defendant’s more accurate statement of law is that an express warranty is “any affirmation of fact or promise, any description, or any sample or model by a seller relating to or describing the goods when such representation forms the basis of the bargain.” *Id.* (citing *Innovative Sols. Int’l, supra*). Plaintiff cites to numerous fake discount cases from California where express warranty claims were allowed to proceed. Dkt. #37 at 21. Accordingly, the Court will not dismiss this claim at this time.

#### 5. Quasi-Contract/Unjust Enrichment Claim

Although this claim cannot proceed to trial at the same time as a contract claim, Plaintiff alleges it in the alternative, as she is permitted to do. *See Arthur v. United States by and Through Veterans Admin.*, 45 F.3d 292, 296 (9th Cir. 1995). She adequately alleges facts that could render the alleged contract void or voidable. *See* Dkt. #29 at ¶ 106. The Court

1 further finds that she has adequately alleged how Defendant has received an unjust benefit  
2 given the above. The Court sees no reason to dismiss this claim at this stage.

### 3 **6. Punitive Damages**

4 Plaintiff states that the only “punitive” damages she is seeking are the treble damages  
5 expressly authorized by the CPA and characterizes Defendant’s motion to dismiss this claim as  
6 “semantic.” Dkt. #37 at 19. On Reply, Defendant points out that Plaintiff seeks “[d]amages,  
7 treble damages, and punitive damages where applicable.” Dkt. #38 at 15 (citing Dkt. #29 at ¶  
8 118). The Court finds that the parties essentially agree on what damages are available. No  
9 further ruling is needed from the Court at this time, however this may be the subject of a  
10 motion in limine later.  
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### 12 **7. Lack of Standing for Nationwide Class Allegations**

13 Defendant argues that Plaintiff does not have standing to assert breach of contract,  
14 breach of express warranty and quasi-contract/unjust enrichment on behalf of a nationwide  
15 class because different states have different laws as to those claims. Dkt. #30 at 21–22.  
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17 The parties disagree about whether this issue needs to be addressed now or at the class  
18 certification stage, each citing cases to support their positions. *See id.* (citing *Brenner v. Vizio,*  
19 *Inc.*, 2018 WL 2229274, at \*2 (W.D. Wash. May 16, 2018) and *Hamilton v. NuWest Grp.*  
20 *Holdings LLC*, 2023 WL 130485, at \*3 (W.D. Wash. Jan. 9, 2023)); Dkt. #37 at 24 (citing  
21 *Melendres v. Arpaio*, 784 F.3d 1254 (9th Cir. 2015); *Sultanis v. Champion Petfoods United*  
22 *States Inc.*, 2021 U.S. Dist. LEXIS 145293, at \*20-21 (N.D. Cal. Aug. 3, 2021); *Patterson v.*  
23 *RW Direct, Inc.*, 2018 U.S. Dist. LEXIS 198887, at \*2 (N.D. Cal. Nov. 21, 2018); and *Healy v.*  
24 *Milliman, Inc.*, 2022 U.S. Dist. LEXIS 65701, at \*6 (W.D. Wash. Apr. 8, 2022)). Given the  
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1 facts and legal claims of this case, the Court finds that Defendants' standing arguments are  
2 better suited for determination at the class certification stage and will defer a ruling at this time.

3 **IV. CONCLUSION**

4 Having reviewed the relevant pleadings and the remainder of the record, the Court  
5 hereby finds and ORDERS that Defendant The Shade Store's Motion to Dismiss, Dkt. #30, is  
6 DENIED.  
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8 DATED this 25<sup>th</sup> day of July, 2024.  
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11 RICARDO S. MARTINEZ  
12 UNITED STATES DISTRICT JUDGE  
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